IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2298 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI R.M.CHOKSI

Versus

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Appearance:

1. Special Civil Application No. 2298 of 1993

MR NALIN K THAKKER for the Petitioner

MR DG CHAUHAN for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/09/2004

ORAL JUDGEMENT

The petitioner, a retired Deputy Executive

Engineer of the respondent - Gujarat Water Supply and Sewerage Board (hereinafter referred to as the 'Board'), seeks deemed promotion to the post of Executive Engineer as on 12th May, 1988, the date on which some Deputy Executive Engineers junior to the petitioner were promoted as Executive Engineer. It is the grievance of the petitioner that several Deputy Executive Engineers junior to the petitioner were promoted to the higher post of Executive Engineer on 12th May, 1988; 30th May, 1992 and on 16th March, 1993. Though the petitioner was senior, as many as 54 Deputy Executive Engineers junior to the petitioner were promoted on the aforesaid dates. Out of the said 54 Deputy Executive Engineers 6 were facing the disciplinary proceedings i.e. in spite of the pending disciplinary proceedings the said 6 Deputy Executive Engineers were promoted to the higher post of Executive Engineer.

Learned advocate Mr.Thakkar has submitted that promotion to the post of Executive Engineer is made from amongst the Deputy Executive Engineers on the basis of merit-cum-seniority. The service record of the petitioner was good and satisfactory. Over a period of nine years before 1988 no adverse entry was made in the service record of the petitioner. In absence of such adverse entry the petitioner could not have been superseded in the matter of promotion to the higher post.

The petition is contested by the Board. The Board has made counter affidavit. It is stated that the petitioner's case for further promotion to the post of Executive Engineer was considered by the Departmental Promotion Committee along with the other Deputy Executive Engineers in the years 1988, 1992 and 1993. However, in none of the said years the petitioner was found to be suitable for further promotion. The petitioner was, therefore, not promoted along with the other Deputy Executive Engineers. It is stated that the petitioner has, on reaching the age of superannuation, retired from service on 31st August, 1993.

Neither the petitioner nor the Board has produced the relevant recruitment rules on the records of the matter. The criterion for further promotion has not been stated in the pleadings. In absence of such pleadings and the documentary evidence I believe that the petitioner's case for further promotion was considered in accordance with the relevant rules. As the petitioner's case was considered and the petitioner was not found suitable for further promotion, the petitioner's claim for deemed promotion as on 12th May, 1988 or as on any

subsequent date is not tenable.

Petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

/sakkaf